



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 15, 1994

Ms. Cynthia N. Milne
General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77342-0099

OR94-340

Dear Ms Milne:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 21497.

The Texas Department of Criminal Justice (the "department") has received a request for certain information contained in the personnel files of certain department employees and general information regarding the employment policies of the department. Specifically the requestor seeks:

- (1) [Department] Employee Rules and Regulations;
- (2) Board Policy and Standard of Conduct;
- (3) Names, Positions, and Qualifications of all employees at the Ramsey II Unit;
- (4) Disciplinary actions and the reasons for such actions taken against all Ramsey II unit officials with the rank of lieutenant or above. Please include their respective names.

You have submitted for our review representative samples of documents responsive to item 4. However, you do not comment on the availability of the remaining information

and have not submitted it to this office for review. We therefore assume that you intend to release it to the requestor. You seek to withhold the requested information in item 4 under sections 552.101 and 552.108 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information in personnel files only if it meets the test under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under common-law privacy, information may be withheld if

- (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and
- (2) the information is not of legitimate concern to the public.

Industrial Found. v. Texas Indus. Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Although information relating to disciplinary actions taken against a public employee may be embarrassing, the public generally has a legitimate interest in knowing about the job performance of public employees. See Open Records Decision Nos. 444 (1986); 405 (1983). In addition, the public has a legitimate interest in the job qualifications of public employees, and the reasons for their dismissal, demotion, promotion or resignation.¹ Open Records Decision Nos. 470, 467 (1987); 444; 405. We have reviewed the documents submitted for our consideration and conclude that the common-law privacy aspect of section 552.101 does not except them from required public disclosure.

We note, however, that the *Stipulated Modification of Section II, D and Section II, A of the Amended Decree of the Ruiz Amended Decree* may apply to some of the information requested in item 4. See Open Records Decision Nos. 600 (1992); 560

¹We note, however, that federal law may prohibit disclosure of the social security numbers found on the documents submitted for our review. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. See Open Records Decision No. 622; see also 42 U.S.C. § 405(c)(2)(C)(v) (governing release of social security number collected in connection with the administration of any general public assistance, driver's license or motor vehicle registration law). Based on the information you have provided, we are unable to determine whether the social security numbers at issue are confidential under this federal statute. We note, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security numbers the department should ensure that the information is not confidential under this federal statute.

(1990). We have marked the information that is not subject to the Open Records Act pursuant to Open Records Decision No. 560.

You also claim that section 552.108 of the Government Code excepts the requested information from required public disclosure. Section 552.108 provides that:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

Section 552.108 does not ordinarily except from disclosure information concerning the final disposition of a complaint against a law enforcement officer. Open Records Decision Nos. 354, 350, 342, 329 (1982). The agency raising section 552.108 must explain, if the information does not supply the explanation on its face, how release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). The Texas Department of Criminal Justice is a law enforcement agency within section 552.108 of the act. Open Records Decision No. 413 (1984). Whether information falls within the section 552.108 exception must be determined on a case-by-case basis. Open Records Decision Nos. 434 at 2; 287 (1981) at 1-2.

You contend that section 552.108 generally excepts the information because "inmate knowledge of disciplinary history can be used as a device to manipulate or intimidate officers in ways that can ultimately lead to compromises in security." This assertion is based on a general theory that does not specifically relate to the records at issue here. We have reviewed the information submitted for our review and conclude that release of the information will not unduly interfere with law enforcement. Accordingly, the department may not withhold the information under section 552.108 of the Government Code. Therefore, except as noted above, the information requested in item 4 must be released in its entirety.²

²We note that the department has submitted only representative samples of the requested documents for our review. We are therefore unable to determine the applicability of section 552.108 to all the requested records. Unless you provide us with compelling reasons for not disclosing the remaining records, we assume that, except as noted above, they will be made available to the requestor. See Open Records Decision No. 586 (1991) (concluding that, in some circumstances, a law enforcement interest may be a compelling reason for nondisclosure.)

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/sbm

Enclosures: Submitted documents

Ref.: ID# 21497

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